

**In the Matter of the Accusation
Against:**

SAMUEL MALAYAN, M.D.

**Physician's and Surgeon's
Certificate No. G-61143**

Respondent

Physician's and Surgeon's)
Certificate No. G-61143)
)
Respondent)
)

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

IT IS SO ORDERED: July 30, 2014.

Der Grenader MC

Dev Gnanadev, M.D., Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
Deputy Attorney General
4 State Bar Number 147250
300 South Spring Street, Suite 1702
5 Los Angeles, California 90013
Telephone: (213) 620-2511
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **SAMUEL MALAYAN, M.D.**
12 **3050 Honolulu Avenue**
Glendale, CA 91214

13 **Physician's and Surgeon's Certificate No. G**
14 **61143**

15 Respondent.

Case No. 17-2010-208215

OAH No. 2012090566

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) is the Interim Executive Officer of the Medical
20 Board of California. She brought this action solely in her official capacity and is represented in
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Colleen M.
22 McGurrin, Deputy Attorney General.

23 2. SAMUEL MALAYAN, M.D., Respondent, is represented in this proceeding by
24 attorney Paul L. Cass, whose address is: 7777 Greenback Lane, Suite 107, Citrus Heights,
25 California 95610.

26 3. On or about August 24, 1987, the Medical Board of California issued Physician's and
27 Surgeon's Certificate No. G 61143 to Respondent. The Physician's and Surgeon's Certificate was
28

1 in full force and effect at all times relevant to the charges brought in Accusation No. 17-2010-
2 208215 and will expire on April 30, 2015, unless renewed.

3 JURISDICTION

4 4. Accusation No. 17-2010-208215 was filed before the Medical Board of California
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 August 29, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 17-2010-208215 is attached as exhibit A and incorporated
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 17-2010-208215. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent freely, voluntarily, knowingly, and intelligently waives and gives up each
23 and every right set forth above.

24 CULPABILITY

25 9. Respondent understands and agrees that the charges and allegations in Accusation
26 No. 17-2010-208215, if proven at a hearing, constitute cause for imposing discipline upon his
27 Physician's and Surgeon's Certificate.

28 ///

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a *prima facie* case for the charges and allegations contained in Accusation No. 17-2010-208215, and that Respondent hereby gives up his right to contest those charges.

11. Further, Respondent agrees that if he ever petitions to modify or terminate any term or condition set forth herein, including but not limited to probation, or should the Board or any other California regulatory agency institute any other action or proceeding against Respondent, including, but not limited to, a Accusation and/or Petition to Revoke Probation, all of the allegations and facts set forth in Accusation No. 17-2010-208215 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent and the State of California.

12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that facsimile or scanned and emailed copies of this Stipulated Settlement and Disciplinary Order, including facsimile or scanned emailed signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 61143 issued to Respondent SAMUEL MALAYAN, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES- MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

2. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within

1 one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense
2 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
3 licensure.

4 A prescribing practices course taken after the acts that gave rise to the charges in the
5 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
6 or its designee, be accepted towards the fulfillment of this condition if the course would have
7 been approved by the Board or its designee had the course been taken after the effective date of
8 this Decision.

9 Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
13 date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to
14 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
15 Program, University of California, San Diego School of Medicine (Program), approved in
16 advance by the Board or its designee. Respondent shall provide the program with any information
17 and documents that the Program may deem pertinent. Respondent shall participate in and
18 successfully complete the classroom component of the course not later than six (6) months after
19 Respondent's initial enrollment. Respondent shall successfully complete any other component of
20 the course within one (1) year of enrollment. The medical record keeping course shall be at
21 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
22 requirements for renewal of licensure.

23 A medical record keeping course taken after the acts that gave rise to the charges in the
24 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
25 or its designee, be accepted towards the fulfillment of this condition if the course would have
26 been approved by the Board or its designee had the course been taken after the effective date of
27 this Decision.

28 Respondent shall submit a certification of successful completion to the Board or its

1 designee not later than 15 calendar days after successfully completing the course, or not later than
2 15 calendar days after the effective date of the Decision, whichever is later.

3 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
4 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
5 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
6 licenses are valid and in good standing, and who are preferably American Board of Medical
7 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
8 relationship with Respondent, or other relationship that could reasonably be expected to
9 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
10 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
11 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

12 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
13 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
14 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
15 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
16 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
17 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
18 signed statement for approval by the Board or its designee.

19 Within 60 calendar days of the effective date of this Decision, and continuing throughout
20 the first eighteen (18) months of probation, Respondent's practice shall be monitored. Prior to the
21 expiration of the eighteen (18) month period, the monitor shall provide a final report to the Board,
22 or its designee, stating that Respondent's practices are within the standard and monitoring is no
23 longer required. If, however, the approved monitor determines that continued monitoring is
24 warranted after the initial eighteen (18) months of probation in order to ensure that Respondent's
25 practices are within the standard, Respondent's practice shall continue to be monitored
26 throughout the remainder of the probationary period, or until the monitor deems that monitoring
27 is no longer required and submits a final report to the Board or its designee indicating that
28 Respondent's practices are within the standard. Respondent shall make all records available for

1 immediate inspection and copying on the premises by the monitor at all times during business
2 hours and shall retain the records for the entire term of probation.

3 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
4 date of this Decision, Respondent shall receive a notification from the Board or its designee to
5 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
6 shall cease the practice of medicine until a monitor is approved to provide monitoring
7 responsibility.

8 The monitor(s) shall also submit a quarterly written report to the Board or its designee
9 which includes an evaluation of Respondent's performance, indicating whether Respondent's
10 practices are within the standards of practice of medicine, and whether Respondent is practicing
11 medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to
12 ensure that the monitor submits the quarterly written reports to the Board or its designee within
13 10 calendar days after the end of the preceding quarter.

14 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
15 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
16 name and qualifications of a replacement monitor who will be assuming that responsibility within
17 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
18 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
19 notification from the Board or its designee to cease the practice of medicine within three (3)
20 calendar days after being so notified Respondent shall cease the practice of medicine until a
21 replacement monitor is approved and assumes monitoring responsibility.

22 In lieu of a monitor, Respondent may participate in a professional enhancement program
23 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
24 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
25 chart review, semi-annual practice assessment, and semi-annual review of professional growth
26 and education. Respondent shall participate in the professional enhancement program at
27 Respondent's expense during the term of probation.

28 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

1 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
2 Chief Executive Officer at every hospital where privileges or membership are extended to
3 Respondent, at any other facility where Respondent engages in the practice of medicine,
4 including all physician and locum tenens registries or other similar agencies, and to the Chief
5 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
6 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
7 calendar days.

8 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9 6. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
10 prohibited from supervising physician assistants.

11 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
12 governing the practice of medicine in California and remain in full compliance with any court
13 ordered criminal probation, payments, and other orders.

14 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
15 under penalty of perjury on forms provided by the Board, stating whether there has been
16 compliance with all the conditions of probation.

17 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
18 of the preceding quarter.

19 9. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

21 Respondent shall comply with the Board's probation unit and all terms and conditions of
22 this Decision.

23 Address Changes

24 Respondent shall, at all times, keep the Board informed of Respondent's business and
25 residence addresses, email address (if available), and telephone number. Changes of such
26 addresses shall be immediately communicated in writing to the Board or its designee. Under no
27 circumstances shall a post office box serve as an address of record, except as allowed by Business
28 and Professions Code section 2021(b).

1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
16 available in person upon request for interviews either at Respondent's place of business or at the
17 probation unit office, with or without prior notice throughout the term of probation.

18 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine in California as defined in
22 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
23 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
24 time spent in an intensive training program which has been approved by the Board or its designee
25 shall not be considered non-practice. Practicing medicine in another state of the United States or
26 Federal jurisdiction while on probation with the medical licensing authority of that state or
27 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
28 not be considered as a period of non-practice.

1 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
2 months, Respondent shall successfully complete a clinical training program that meets the criteria
3 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
4 Disciplinary Guidelines" prior to resuming the practice of medicine.

5 Respondent's period of non-practice while on probation shall not exceed two (2) years.

6 Periods of non-practice will not apply to the reduction of the probationary term.

7 Periods of non-practice will relieve Respondent of the responsibility to comply with the
8 probationary terms and conditions with the exception of this condition and the following terms
9 and conditions of probation: Obey All Laws; and General Probation Requirements.

10 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
11 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
12 completion of probation. Upon successful completion of probation, Respondent's certificate shall
13 be fully restored.

14 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
15 of probation is a violation of probation. If Respondent violates probation in any respect, the
16 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
17 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
18 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
19 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
20 the matter is final.

21 14. LICENSE SURRENDER. Following the effective date of this Decision, if
22 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
23 the terms and conditions of probation, Respondent may request to surrender his or her license.
24 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
25 determining whether or not to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
27 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
28 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject

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1 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

3 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
4 with probation monitoring each and every year of probation, as designated by the Board, which
5 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
6 California and delivered to the Board or its designee no later than January 31 of each calendar
7 year.

8
9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Paul L. Cass. I understand the stipulation and the effect it will
12 have on my Physician's and Surgeon's Certificate No. 61143. I enter into this Stipulated
13 Settlement and Disciplinary Order freely, voluntarily, knowingly, and intelligently, and agree to
14 be bound by the Decision and Order of the Medical Board of California.

15
16 DATED: 7 26 2013


17 SAMUEL MALAYAN, M.D.
Respondent

18
19
20
21 I have read and fully discussed with Respondent SAMUEL MALAYAN, M.D. the terms
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: _____

25 Paul L. Cass
Attorney for Respondent

26 ///

27 ///

28 ///

1 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

3 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
4 with probation monitoring each and every year of probation, as designated by the Board, which
5 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
6 California and delivered to the Board or its designee no later than January 31 of each calendar
7 year.

8
9 ACCEPTANCE

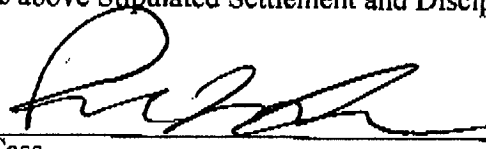
10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Paul L. Cass. I understand the stipulation and the effect it will
12 have on my Physician's and Surgeon's Certificate No. 61143. I enter into this Stipulated
13 Settlement and Disciplinary Order freely, voluntarily, knowingly, and intelligently, and agree to
14 be bound by the Decision and Order of the Medical Board of California.

15
16 DATED: _____

17 SAMUEL MALAYAN, M.D.
18 Respondent
19
20

21 I have read and fully discussed with Respondent SAMUEL MALAYAN, M.D. the terms
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: 7/26/13

25 
Paul L. Cass
Attorney for Respondent
26
27
28

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///

///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 7/26/2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 17-2010-208215

1 KAMALA D. HARRIS
2 Attorney General of California
3 E. A. JONES III
4 Supervising Deputy Attorney General
5 State Bar No. 71375
6 California Department of Justice
7 300 So. Spring Street, Suite 1702
8 Los Angeles, CA 90013
9 Telephone: (213) 897-2543
10 Facsimile: (213) 897-9395
11 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 29, 2012
BY Dr. M. J. [Signature] ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SAMUEL MALAYAN, M.D.
610 N. Central Ave., Suite 301
Glendale, CA 91203

Physician's and Surgeon's Certificate No. G
61143

Respondent.

Case No. 17-2010-208215

ACCUSATION

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
2. On or about August 24, 1987, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 61143 to Samuel Malayan, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2013, unless renewed.

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed

1 one year, placed on probation and required to pay the costs of probation monitoring, or such other
2 action taken in relation to discipline as the Board deems proper.

3 5. Section 2234 of the Code states:

4 "The Division of Medical Quality¹ shall take action against any licensee who is charged
5 with unprofessional conduct. In addition to other provisions of this article, unprofessional
6 conduct includes, but is not limited to, the following:

7 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
8 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
9 Practice Act].

10 "(b) Gross negligence.

11 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
12 omissions. An initial negligent act or omission followed by a separate and distinct departure from
13 the applicable standard of care shall constitute repeated negligent acts.

14 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
15 that negligent diagnosis of the patient shall constitute a single negligent act.

16 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
17 constitutes the negligent act described in paragraph (1), including, but not limited to, a
18 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
19 applicable standard of care, each departure constitutes a separate and distinct breach of the
20 standard of care.

21 "(d) Incompetence.

22 "(e) The commission of any act involving dishonesty or corruption which is substantially
23 related to the qualifications, functions, or duties of a physician and surgeon.

24 "(f) Any action or conduct which would have warranted the denial of a certificate."

25 6. Section 725 of the Code states:

26 "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering

27 ¹ "Division of Medical Quality" refers to the Medical Board of California. (Bus. & Prof.
28 Code, § 2002.)

1 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
2 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
3 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
4 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language
5 pathologist, or audiologist.

6 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
7 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
8 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
9 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
10 imprisonment.

11 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
12 administering dangerous drugs or prescription controlled substances shall not be subject to
13 disciplinary action or prosecution under this section.

14 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
15 for treating intractable pain in compliance with Section 2241.5."

16 7. Section 2266 of the Code states:

17 "The failure of a physician and surgeon to maintain adequate and accurate records
18 relating to the provision of services to their patients constitutes unprofessional conduct."

19 FIRST CAUSE FOR DISCIPLINE

20 (Gross Negligence)

21 8. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
22 the Code in that he was grossly negligent in the care and treatment of a patient. The
23 circumstances are as follows:

24 Patient J.A.

25 A. On or about March 17, 2007, patient J.A. saw Respondent for the first time,
26 with a complaint of diabetes on insulin. Respondent took a past medical history, surgical
27 history, family history and social history. The past medical history was significant for
28 diabetes mellitus, anxiety, depression and osteoarthritis of the right hand, hips and back.

1 Respondent conducted a physical exam, noting under musculo/skeletal "pain – hips +
2 back." Respondent's assessment was diabetes, hypertension, hypercholesterolemia, erectile
3 dysfunction, insomnia, GERD, COPD/emphysema, depression, anxiety osteoarthritis –
4 hands, and headache. The plan included prescriptions for various medications including
5 Vicodin ES² and Ativan³ 2 mg. Respondent did not require patient J.A. to sign a pain
6 management contract.

7 B. Patient J.A. next saw Respondent on April 17, 2007, with a complaint of
8 increasing stress. A physical exam was conducted but no musculo/skeletal, back or hip
9 exam was noted. The assessment included diabetes; hypertension ("better"); herniated
10 lumbosacral disc; and osteoarthritic hips. The plan included continuing medications and
11 placing the patient on disability from March 17, 2007. The patient was referred for pain
12 management based on the diagnosis of herniated lumbrosacral disc. The referral was
13 approved on April 20, 2007, for an office consultation with a pain specialist.

14 C. On May 25, 2007, the patient once again saw Respondent, this time with a
15 complaint of a productive cough. After conducting a physical exam, Respondent
16 assessment was bronchitis and diabetes. Respondent's plan included prescribing
17 medications. There was no follow up charted regarding the April 20, 2007, pain specialist
18 referral. Respondent did not require patient J.A. to sign a pain management contract.
19 There was no evaluation of the effectiveness of the pain medications prescribed.
20 Respondent did not order a urine screen to assess the patient's drug use.

21 D. On or about May 31, 2007, Respondent received patient J.A.'s prior medical
22 records from Kaiser Permanente Medical Group, Baldwin Park ("Kaiser records"). Among
23

24 ² "Vicodin ES" is a brand name for hydrocodone with acetaminophen. Hydrocodone with
25 acetaminophen is a Schedule III controlled substances pursuant to Health and Safety Code
sections 11056, subdivision (e)(4), and a dangerous drugs within the meaning of Business and
Professions Code section 4022. It is prescribed for pain.

26 ³ Ativan is the brand name for the generic drug lorazepam, a benzodiazepine prescribed
27 for anxiety. It is a Schedule IV controlled substance pursuant to Health and Safety Code section
28 11057, subdivision (d)(13), and a dangerous drug within the meaning of Business and Professions
Code section 4022.

1 other things, the records noted (in August 2000) that the patient had a history of heroin IV
2 drug abuse, and was at that time smoking cocaine four times per week. An x-ray study of
3 the patient's right hip in August 2000 found no acute fracture or dislocation. It noted
4 sclerosis in both hip joints possibly due to mild degenerative arthritis. An August 2000
5 study of the cervical spine found no evidence of compression fracture or degenerative disc
6 disease. In 2006, the chart noted that the patient denies illicit substance abuse for at least
7 six months ("used to use cocaine"). The same chart stated, "Can't [rule out] dyesthesia due
8 to illicit drug use (crystal met[h].)."

9 E. The patient was next seen by Respondent on July 26, 2007, complaining of
10 neuropathic pain in feet and legs. A physical exam was performed and an assessment of
11 diabetes, hypertension and neuropathic pain was made. Medications, including Vicodin
12 ES, were prescribed. There was no evaluation of the effectiveness of the pain medications
13 prescribed. Respondent did not order a urine screen to assess the patient's drug use.
14 Respondent did not require patient J.A. to sign a pain management contract. There is no
15 documentation regarding Respondent's review of the Kaiser records.

16 F. Thereafter the patient was seen on or about November 13, 2007; March 31,
17 2008; October 31, 2008; July 31, 2009; November 4, 2009; November 9, 2009 (for a
18 procedure – right knee injection); January 26, 2010; and May 13, 2010. The patient died on
19 June 16, 2010, when he was hit by an automobile. During these eight visits there was no
20 history directed to the patient's complaint of anxiety, for which Respondent made no
21 referral to a psychiatrist and for which he continued to prescribe a benzodiazepine
22 (alternating between diazepam⁴ and alprazolam⁵). During these eight visits, Respondent
23 continued to regularly prescribe Vicodin ES. On or about November 9, 2009, Respondent
24

25 ⁴ Diazepam is a Schedule IV controlled substance as designated by Health and Safety
26 Code section 11057, subdivision (d)(9), and a dangerous drug within the meaning of Business
and Professions Code section 4022. It is a depressant drug.

27 ⁵ Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
28 Code section 11057, subdivision (d)(1), and a dangerous drug within the meaning of Business and
Professions Code section 4022. It is a depressant drug.

1 added a prescription for acetaminophen with codeine⁶ #100 to patient J.A.'s pain
2 medication regimen. This medication was prescribed on a monthly basis thereafter with up
3 to three refills. On or about December 19, 2008, Respondent added Cheratussin AC,⁷ a
4 narcotic cough suppressant, to the patient's pharmacology without a medical indication in
5 the patient's chart. During the above listed eight visits, there was no evaluation of the
6 effectiveness of the pain medications prescribed, nor did Respondent order a urine screen or
7 CURES⁸ report during these visits to assess the patient's drug use. In addition, during these
8 eight visits, Respondent did not require patient J.A. to sign a pain management contract, nor
9 to consult with an addictionologist.

10 G. Between on or about March 17, 2007, and May 13, 2010, Respondent was
11 grossly negligent when he prescribed narcotics medications and benzodiazepines without a
12 pain management contract, urine screens and review of CURES reports; without ongoing
13 evaluation of the efficacy of the pain treatment modality; and without consultations by a
14 psychotherapist, addictionologist or orthopedist.

15 SECOND CAUSE FOR DISCIPLINE

16 (Repeated Negligent Acts)

17 9. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
18 the Code in that he was repeatedly negligent in the care and treatment of a patient. The
19 circumstances are as follows:

20 Patient J.A.

21 ⁶ Acetaminophen with codeine is a Schedule III controlled substance pursuant to Health
22 and Safety Code section 11056, subdivision (e)(2), and a dangerous drug within the meaning of
Business and Professions Code section 4022. It is prescribed for pain relief.

23 ⁷ Cheratussin AC is a brand name for a compound of the expectorant guaifenesin and
24 codeine. It is a Schedule V controlled substance as designated by Health and Safety Code section
25 11058, subdivision (c)(1), and a dangerous drug within the meaning of Business and Professions
Code section 4022.

26 ⁸ The California Department of Justice, has a Prescription Drug Monitoring Program
27 (PDMP) system which allows pre-registered users, including licensed healthcare prescribers
28 eligible to prescribe controlled substances, to access timely patient controlled substance history
information contained in the Controlled Substance Utilization Review and Evaluation System
(CURES) data base.

1 A. The facts and circumstances alleged in paragraph 8 above are incorporated here
2 as if fully set forth.

3 B. Between on or about March 17, 2007, and May 13, 2010, Respondent was
4 negligent when he prescribed narcotics medications and benzodiazepines without a pain
5 management contract, urine screens and reviewing CURES reports; without ongoing
6 evaluation of the efficacy of the pain treatment modality; and without consultations by a
7 psychotherapist, addictionologist or orthopedist.

8 Patient J.B.

9 C. On or about May 20, 2002, patient J.B. first saw Respondent, who diagnosed
10 her with hypothyroidism. The patient continued to see Respondent on a periodic basis
11 through June 2011.

12 D. On or about April 23, 2007, the patient presented to Respondent who noted that
13 she had been involved in an auto accident on April 4, 2007, and complained of neck pain
14 and an injury to her right arm. After performing a physical exam, the patient was
15 prescribed Voltaren.⁹ There is no record that Respondent requested an emergency room
16 record regarding the accident. Respondent also prescribe Provigil¹⁰ because he was
17 concerned the patient might fall asleep while driving.

18 E. On or about June 18, 2007, Respondent prescribed Vicodin #60 (one pill every
19 four hours as needed). Respondent did not see the patient on that date and there is no
20 charting in the medical record regarding the prescription and the indications for it.

21 F. On or about July 11, 2007, Respondent renewed the prescription for Vicodin
22 #60 with one refill. Respondent did not see the patient on this date. There was no charting
23 in the medical record regarding the prescription and the indications for it other than the
24 pharmacy prescription refill request.

25 ⁹ Voltaren (diclofenac) is used to relieve pain, swelling (inflammation), and joint stiffness
26 caused by arthritis. It may also be used to treat other painful conditions (such as dental pain,
muscle aches, pain after surgery or after having a baby).

27 ¹⁰ Provigil (modafinil) is used to treat excessive sleepiness caused by narcolepsy or shift
28 work sleep disorder. It is in a class of medications called wakefulness promoting agents.

1 G. On or about September 25, 2007, Respondent refilled a prescription for
2 Vicodin #60 with one refill. Respondent did not see the patient on this date. There was no
3 charting in the medical record regarding the prescription and the indications for it other than
4 the pharmacy prescription refill request.

5 H. On or about November 26, 2007, Respondent saw patient J.B. who complained
6 of weight gain, fatigue, headaches and lethargy. Respondent had last seen the patient on
7 April 23, 2007. Respondent took a history of weekly migraines and conducted a physical
8 exam. His assessment included migraine. He prescribed Vicodin #100 with five refills and
9 advised the patient to follow up in four months. The patient was not required by
10 Respondent to enter into a pain management agreement. Respondent did not order CURES
11 reports and /or urine screenings of the patient. Respondent did not evaluate the patient's
12 response to the pain medication nor consider referring the patient to a pain management
13 specialist.

14 I. On or about March 12, 2008, Respondent saw patient J.B. who complained of
15 pain from a fall, premenstrual migraine and right lower abdominal pain. Respondent took a
16 history and performed a physical examination. His assessment included coccygeal pain and
17 premenstrual migraine. Among other things, he prescribed Vicodin ES #100 with five
18 refills. The patient was not required by Respondent to enter into a pain management
19 agreement. Respondent did not order CURES reports and /or urine screenings of the
20 patient. Respondent did not evaluate the patient's response to the pain medication nor
21 consider referring the patient to a pain management specialist. On or about June 3, 2008,
22 Respondent prescribed Vicodin ES #30 by phone. The prescription was refilled on June 23,
23 2008, with one refill.

24 J. On or about June 27, 2008, Respondent saw patient J.B. who complained of
25 post surgery pain (removal of cyst from right ovary) and severe premenstrual pelvic pain.
26 Respondent took a history and performed a physical exam. His assessment included post
27 operative pain. He prescribed Vicodin ES #120 with five refills. The patient was not
28 required by Respondent to enter into a pain management agreement. Respondent did not

1 order CURES reports and /or urine screenings of the patient. Respondent did not evaluate
2 the patient's response to the pain medication nor consider referring the patient to a pain
3 management specialist. The patient obtained refills of the Vicodin on July 16, 2008,
4 August 4, 2008, August 27, 2008, September 23, 2008, October 15, 2008, and November
5 10, 2008.

6 K. On or about November 25, 2008, patient J.B. was seen by Respondent.
7 Respondent had last seen the patient on June 27, 2008. The patient came in for a blood test.
8 No chief complaints were noted. Although a physical exam was conducted, the chart does
9 not reflect an exam of the patient's back. The assessment included chronic low back pain
10 and Vicodin # 100 with no refills was prescribed for pain. The patient was not required by
11 Respondent to enter into a pain management agreement. Respondent did not order CURES
12 reports and /or urine screenings of the patient. Respondent did not evaluate the patient's
13 response to the pain medication nor consider referring the patient to a pain management
14 specialist. The "no refill" prescription was filled on December 4, 2008. Nonetheless, six
15 refills were obtained on December 21, 2008, January 5, 2009, January 18, 2009, January
16 31, 2009, February 13, 2009, and March 19, 2009. None of these refills were reflected in
17 the patient's chart.

18 L. On or about March 25, 2009, patient J.B. was seen by Respondent with
19 complaints of fatigue, insomnia and difficulty concentrating. The review of systems was
20 positive for frequent headaches and more severe premenstrual migraine. The plan did not
21 include pain medications. On or about March 29, 2009, a prescription from Respondent
22 was filled for the patient for Vicodin ES #100. This was not reflected in the chart. The
23 patient was not required by Respondent to enter into a pain management agreement.
24 Respondent did not order CURES reports and /or urine screenings of the patient.
25 Respondent did not evaluate the patient's response to the pain medication nor consider
26 referring the patient to a pain management specialist.

27 M. On or about April 13, 2009, Respondent signed a prescription refill request
28 from a pharmacy for Vicodin ES #100 with five refills. On or about April 14, 2009, the

1 prescription was filled. Thereafter, six refills were obtained on April 26, 2009, May 7,
2 2009, May 26, 2009, June 10, 2009, June 25, 2009, and July 10, 2009. The patient obtained
3 a prescription for a higher potency Vicodin ES #120 which was filled on July 31, 2009.
4 There is a request for refill authorization in the chart but no note as to why the number and
5 potency was increased. The Vicodin #120 prescription was refilled on August 20, 2009,
6 September 11, 2009, and October 3, 2009.

7 N. On or about October 6, 2009, the patient presented to Respondent. Respondent
8 had last seen the patient on March 25, 2009. The review of systems was noted to be the
9 same as on March 25, 2009, presumably including the positive for frequent headaches and
10 more severe premenstrual migraine. There are no other chart notes addressing those issues
11 and the assessment/plan does not refer to them. The plan does not expressly include
12 Vicodin but the chart includes a prescription on this date for Vicodin ES #100 with no
13 refills signed by Respondent. The patient was not required by Respondent to enter into a
14 pain management agreement. Respondent did not order CURES reports and /or urine
15 screenings of the patient. Respondent did not evaluate the patient's response to the pain
16 medication nor consider referring the patient to a pain management specialist.

17 O. On October 27, 2009, a prescription for Vicodin ES #120 was filled for patient
18 J.B. The prescription was refilled on or about November 12, 2009, November 29, 2009,
19 December 17, 2009, and January 6, 2010. A prescription for Vicodin ES #100 was filled
20 for patient J.B. on January 24, 2010.

21 P. On or about February 12, 2010, the patient was seen again by Respondent.
22 Respondent had last seen the patient on October 6, 2009. The review of systems was
23 positive for headaches and migraines. The chart did not otherwise address these issues.
24 The plan did not include Vicodin but the chart includes a prescription for Vicodin ES #100,
25 with no refills, which was filled on this date. The patient was not required by Respondent
26 to enter into a pain management agreement. Respondent did not order CURES reports and
27 /or urine screenings of the patient. Respondent did not evaluate the patient's response to
28 the pain medication nor consider referring the patient to a pain management specialist.

1 Q. On or about March 17 and 22, 2010, prescriptions for Vicodin #30 prescribed
2 by a dentist were filled for the patient.

3 R. On or about March 28, 2010, a prescription from Respondent for Vicodin ES
4 #100 was filled for patient J.B. The prescription was refilled on or about April 22, 2010.

5 S. On or about May 2, 2010, patient J.B. was seen by Respondent with a
6 complaint of neck pain. The review of systems was otherwise the same as the patient's last
7 visit on February 12, 2010. The neck was examined and the right trapezius muscle was
8 found to be tender to palpation. Trigger point injections were done in that area and Vicodin
9 ES #100 with five refills was prescribed and it was filled on May 6, 2010. The patient was
10 not required by Respondent to enter into a pain management agreement. Respondent did
11 not order CURES reports and /or urine screenings of the patient. Respondent did not
12 evaluate the patient's response to the pain medication nor consider referring the patient to a
13 pain management specialist. The prescription was refilled four times on May 14, 2010,
14 June 6, 2010, June 25, 2010, and July 12, 2010.

15 T. On or about August 1, 2010, a prescription for Vicodin ES #100 was filled for
16 the patient. On August 16, 2010, Respondent's office approved a prescription refill request
17 for Vicodin ES #100 with no refills. This was filled on August 19, 2010, and was the fifth
18 refill from the prescription written May 2, 2010. On or about September 8, 2010, a
19 prescription was filled for Vicodin ES #100. On September 27, 2010, Respondent's office
20 approved a prescription refill request for Vicodin ES #100 with no refills; it was filled on
21 the same date. The patient received 400 Vicodin pills from Respondent in a 60 day period.

22 U. On or about October 14, 2010, Respondent saw patient J.B. The review of
23 systems disclosed complaints of severe headaches and was positive for neck pain. The
24 chart did not otherwise address these issues. The plan did not include Vicodin but the chart
25 includes a prescription for Vicodin ES #100, with 5 refills, which was filled on this date.
26 The patient was not required by Respondent to enter into a pain management agreement.
27 Respondent did not order CURES reports and /or urine screenings of the patient.
28 Respondent did not evaluate the patient's response to the pain medication nor consider

1 referring the patient to a pain management specialist. The five refill prescription was
2 refilled six times on November 3, 2010, November 24, 2010, December 17, 2010, January
3 2, 2010, January 16, 2010, and February 2, 2011.

4 V. On or about February 22, 2011, patient J.B. was seen by Respondent with a
5 review of systems and physical exam noted to be the same as on October 14, 2010. The
6 chart did not otherwise address the pain issues. The plan did not include Vicodin but the
7 chart includes a prescription for Vicodin ES #100, with 3 refills. The patient was not
8 required by Respondent to enter into a pain management agreement. Respondent did not
9 order CURES reports and /or urine screenings of the patient. Respondent did not evaluate
10 the patient's response to the pain medication nor consider referring the patient to a pain
11 management specialist. Prescriptions for the three refill Vicodin ES #100 were filled five
12 times for patient J.B. on March 8, 2011, March 26, 2011, April 12, 2011, April 27, 2011,
13 and May 13, 2011. On or about June 8, 2011, the same prescription was refilled a sixth
14 time pursuant to a request for refill authorization approved by Respondent's office.

15 W. On or about June 22, 2011, Respondent saw patient J.B. with a complaint of
16 neck pain right side greater than left and back pain. Respondent examined the neck and the
17 right lower back confirming tenderness. The assessment/plan included "Low back pain –
18 Vicodin ES." The patient was not required by Respondent to enter into a pain management
19 agreement. Respondent did not order CURES reports and /or urine screenings of the
20 patient. Respondent did not evaluate the patient's response to the pain medication nor
21 consider referring the patient to a pain management specialist. A prescription for Vicodin
22 ES #120 with 2 refills was filled on this date.

23 X. Between on or about November 26, 2007, and June 22, 2011, Respondent was
24 negligent when he prescribed narcotics medications without a pain management contract;
25 without ordering urine screens and CURES reports; without ongoing evaluation of the
26 efficacy of the pain treatment modality; and without consultations by a pain management
27 specialist.

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THIRD CAUSE FOR DISCIPLINE

(Excessive Prescribing)

10. Respondent is subject to disciplinary action under section 725 of the Code in that he clearly excessively prescribed narcotic drugs to a patient. The circumstances are as follows:

Patient J.A.

A. The facts and circumstances alleged in paragraphs 8.A. through 8.F. above are incorporated here as if fully set forth.

B. Between on or about March 17, 2007, and May 13, 2010, Respondent clearly excessively prescribed narcotic drugs and benzodiazepines to patient J.A.

Patient J.B.

C. The facts and circumstances alleged in paragraphs 9.A. through 9.W. above are incorporated here as if fully set forth.

D. Between on or about November 26, 2007, and June 22, 2011, Respondent clearly excessively prescribed narcotic drugs to patient J.B.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

11. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records of the services he provided to patients. The circumstances are as follows:

A. The facts and circumstances alleged in paragraphs 8.A. through 8.F. and 9.A. through 9.W. above are incorporated here as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

12. Respondent is subject to disciplinary action under section 2234 of the Code in that he engaged in unprofessional conduct. The circumstances are as follows:

A. The facts and circumstances alleged in paragraphs 8, 9, 10 and 11 above are incorporated here as if fully set forth.

////

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 61143, issued to Samuel Malayan, M.D.;
2. Revoking, suspending or denying approval of Samuel Malayan, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Samuel Malayan, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: August 29, 2012


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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